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ALEXANDER L. STEVAS,
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No. 82-13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ALPHONSO RANDOLPH,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether petitioner was denied his right to a probation revocation hearing within a reasonable time after the filing of the petition to revoke.

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RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Appellate Court of Illinois, First Judicial District, is reported at 98 Ill. App. 3d 696, 424 N.E.2d 893 (1st Dist. 1981).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari. (Petition at 2) However, as treated more fully in the argument portion of this Brief in Opposition, respondent does not believe that the petitioner has shown any compelling reason for this Court to grant the Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner has quoted those provisions of the United States Constitution applicable to this case. (Petition at 2)

STATEMENT OF THE CASE

Petitioner's rendition of the facts is in almost every instance highly disputable and cannot be relied upon. Respondent submits that the relation of the factual background found in the opinion of the Illinois Appellate Court (Appendix A) is adequate for purposes of this review and is to be preferred.

The specific areas of factual dispute between the parties will be detailed in the argument section of this Brief.

REASONS FOR DENYING THE WRIT

I.

THE PRESENT PETITION PRESENTS NO QUESTION OF CONSTITUTIONAL DIMENSION. INSTEAD, PETITIONER'S ENTIRE ARGUMENT DEPENDS UPON HIS DISPUTE WITH THE ILLINOIS COURTS AS TO THREE QUESTIONS OF ILLINOIS LAW: (1) WHETHER THE INDICTMENT WAS FILED ON APRIL 27, 1976, AND (2) WHETHER PETITIONER'S PERIOD OF PROBATION HAD EXPIRED AT THE TIME OF HIS REVOCATION HEARING, AND (3) WHETHER THE DELAY IN HEARING WAS IN LARGE PART DUE TO PETITIONER'S ACTIONS.

The present petition presents no claim whatsoever of a violation of federal constitutional law. It is insufficient to support the relief sought, grant of the writ of certiorari. Although there is no constitutional right to probation or parole, the State of Illinois concedes that where such dispensations are established by law, as in Illinois, then there are constitutional strictures which apply to the operation of the programs. In particular, it is conceded that petitioner possessed a constitutional right to a hearing prior to the revocation of his probation, and it is conceded that, "A defendant is entitled to a probation revocation hearing within a reasonable time after the filing of a petition." *People v. Randolph*, 98 Ill. App. 3d 969 (1st Dist. 1981); Pet. App. at 6. Both of these rights were recognized and enforced by the Illinois Appellate Court in petitioner's case.

Petitioner's claim that his revocation hearing was not within a constitutionally permissible period of time depends entirely upon his assumption of a factual background at odds with the conclusions of the Illinois courts. Contrary to petitioner's claim (Pet. at i), the Illinois courts did not conclude that there had been no in-

ordinate delay after first finding that the state had waited 43 months to file its petition and that the term of probation had expired at the time of the hearing. That Court's opinion clearly demonstrates that its decision that there was no constitutional violation flows from its findings, under Illinois law, that the State had validly filed its petition for revocation shortly after the incident which caused the revocation, that this action tolled the running of the term of probation so that the hearing was not held outside of that period, and that a large part of the delay in holding the hearing was attributable to requests for continuance and other actions undertaken by the defendant. (See Pet. Appendix at 6-8)

Petitioner does not allege that the findings of the appellate court were based on insufficient evidence, logically deficient, or otherwise erroneous. He simply ignores them and alleges contrary facts. Such argument presents nothing for review in this Court. The long-standing policy of this Court has been succinctly stated by Justice Holmes: "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 45 S.Ct. 496, 497 (1925)

The principal factual errors contained in petitioner's argument are as follows:

1. The claim that "petitioner's four-year probationary term ended on June 18, 1979", prior to the revocation hearing is false. (Petition at 9) The appellate court specifically found that the term of probation had been tolled by the State's filing on April 27, 1976, and petitioner was thus still on probation at the time of his hearing. (*People v. Randolph*, App. at 5)

2. The claim that both the appellate court and the State concede that no revocation petition was

filed on April 27, 1976 is false. (Pet. at 9) The appellate court specifically found that the actions of the State on April 27, 1976 constituted a sufficient filing of the petition under Illinois law: "We consequently must reject defendant's assertion that no petition was filed on the noted date." (*People v. Randolph*, App. at 5)

3. The claim that "it is thoroughly unexplainable why the State took no action on said petition" prior to the eventual hearing (Pet. at 10) completely ignores the explanation provided by the appellate court: "Examination of the common law record indicates that defendant was responsible for most of the delays in hearing the matter between the filing of the original petition and May 1977." (Appendix at 7)

4. The claim that petitioner's term of probation "was never tolled in accordance with the statutory requirements" (Pet. at 10) is directly contrary to the finding of the Illinois Appellate Court, which cites and interprets the relevant statute. (See Appendix at 5-6)

All of the above-outlined factual misstatements clearly demonstrate that the present petition presents nothing for the proper review of this Court, but is instead an attempt to relitigate the facts of record.

The respondent would also note that the conclusions of the Illinois Appellate Court regarding the lack of any prejudice suffered by the petitioner as a result of the delay in hearing are relevant. Even assuming the factual background which he alleges, the injury claimed is highly speculative and *de minimus*. The argument that a witness was lost by reason of the delay was specifically rejected by the appellate court (App. at 7), which

concluded on its review of the record that no prejudice had been shown. Thus, the present petition only presents a ground for relief where all of the disputed facts claimed by the petitioner are conceded and where it is presumed that a 43 month delay in hearing, partly caused by the defendant, is per se unreasonable and constitutes a denial of due process. The Illinois Appellate Court refused to acknowledge this presumption, citing *People v. McGee*, 49 Ill. App. 3d 523, 526, 364 N.E.2d 546 (1st Dist. 1977). The petitioner has cited no legal authority in support of this position, and it should be again rejected in this Court.

CONCLUSION

For the foregoing reasons, respondent prays that the petition for Writ of Certiorari be denied.

Respectfully submitted,

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September 3, 1982